Supreme Court, U.S.
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No 06-64

In The

Supreme Court of the United States

ROBERT W. RAMSEY, PETITIONER

v.

JAMES IRVINE AND SANDRA IRVINE

On Petition for Writ of Certiorari to the Supreme Court of the State of Colorado

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether an intentional refusal by a state court to acknowledge the tort under which a pro se plaintiff brought suit amounts to the denial of meaningful access to the courts guaranteed by the U.S. Constitution.

2) Whether an intentional refusal by a state appellate court to apply the state's written rules of civil procedure and the state's case law in denying appellate review to a pro se litigant amounts to the denial of due process guaranteed by the U.S. Constitution.

3) Whether the denial of certiorari to a pro se litigant by a state supreme court when there has been no appellate review on the merits of the case seeking certiorari amounts to the denial of due process and meaningful access to the courts guaranteed by the U.S. Constitution.

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OPINIONS BELOW

The opinion of the district court is lengthy and pertinent parts are included in the appendix.

Denials of the appeal, petition for rehearing and petition for writ of certiorari are included in the appendix.

JURISDICTION

The Petition for Writ of Certiorari was denied on April 10, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

STATUTES, RULES, TORTS OR REGULATORY PROVISIONS INVOLVED

1) 28 U.S.C. 1257 provides, in pertinent part: (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the United States.

2) Supreme Court Rule 12 (4) provides, in pertinent part: . . . When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices. . . .

3) C.R.C.P. Rule 59 states, in pertinent parts: Within 15 days of entry of judgment as provided in C.R.C.P. 58 or such greater time as the court may allow, a party may move for post-trial relief . . . **If notice of the entry of judgment, decree, or order is transmitted to the parties by mail, the time for the filing of any motion for post-trial relief shall commence from the date of the mailing of the notice [emphasis added].**

4) C.R.C.P. Rule 59 6(e) further provides an additional 3 days when service is by mail, **as in this case [below]**.

5) Restatement of the Law, 1948 Supp., Torts, subsection 46. This has been retained, and covered by Comment k, in the Second Restatement of Torts, subsection 46.

CONSTITUTIONAL PROVISIONS INVOLVED

1) The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law[.]"

2) The First Amendment to the United States Constitution provides, in pertinent part: "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances.

3) Article II, Section 25 of the Colorado Constitution: Due process of law. No person shall be deprived of life, liberty or property, without due process of law.

STATEMENT

In 1997 a near fatal dog attack upon a llama I owned initiated a contentious relationship with my neighbors, Sue Brookman and David Faulkner. When my pet pot-bellied pig was killed a few months later by the same dogs, litigation, prosecuted by the District Attorney's office, ensued. Seven months later the three dogs owned by Brookman and Faulkner were destroyed pursuant to law. The respondents in the instant case, James and Sandra Irvine, friends of Brookman and Faulkner, purchased property adjoining mine. Immediately, a pattern of conduct began which continued over a period of six months which caused severe emotional distress to my wife, Ann L. Ramsey, and myself.

The conduct included (a) filling the cracks between the boards of our deck, on which we enjoyed outdoor meals, with goat dung, (b) causing damage to our private road and making the county road impassable, (c) attaching to our fence converting it to a corral for their animals, (d) causing animal waste to flow onto our property,

(e) littering and placing junk vehicles and machinery in an adjoining meadow, and other insulting and irritating conduct. [R. Vol. 1 at19:12 – 24:8, Id. At 155:17 – 159:6, Id. 159:7 – 160:13; R. Vol. 12, at 352:25 – 353:18, Id. At 150:14 – 164:9; 221:22 – 229:20, Id. At 127:5 – 139:7; 140:1-12; Vol. 12, at 260:15 – 265:12; 271:19 -276:2, R. Vol. 11, at 24:11 – 25:14, R. Vol. 12, at 277:15 – 279:14; 299:13 – 300:1, R. Vol. 11, at 121:19 – 123:1, Id. At 79:10 – 90:16, R. Vol. 11, at 165:19-22, R. Vol. 11, at 99:23 – 101:18; 192:18 – 199:11, R. Vol. 12, at 280:24 – 290:24; 169:14 – 171;14, R. Vol. 12, at 345:8 – 347:14.] *M.B.M. Co., Inc. v. Counce*, sustained a claim of extreme and outrageous conduct by the mere withholding of funds from an employees last paycheck.

I attempted to communicate with the Irvines to no avail. Resolved that the pattern of conduct was not going to continue, I had to choose between taking the law into my own hands by violent means, which was growing more imminent with each successive act in the pattern of conduct, or resolving the matter in a civil manner. Making the correct choice, and after exhausting all possible administrative options for resolution, I turned to the only forum remaining – civil court.

Being a natural citizen of the United States and reasonably educated I decided it would be unfair to have to spend thousands of dollars on an attorney I could not afford and chose to responsibly proceed pro se. **My initial complaint and amended complaint in District Court set**

forth my claims of intentional (or reckless, equivalent under Colorado law) infliction of emotional distress.

In numerous documents in the record, such as briefs, proposed finding of fact and judgment and motions for post trial relief, I continually reiterated my cause of action, intentional infliction of emotion distress, and its elements.

The trial court ruled my case to be frivolous, groundless or vexatious and ruled for the defendants on their claim of abuse of process and assessed approximately $17,000 in attorney's fees against me. I hired counsel and appealed. The appellate court vacated the ruling and remanded the case for further proceedings. We filed a motion for a new trial. The district court had "lost" all but a small portion of the record of the defense's case and the reconstruction we presented pursuant to C.A.R. 10 was denied. However, the trial court ruled that the record of the case was sufficient because it failed to make a prima facie case. I again appeared pro se. The re-trial was *limited* to whether or not I "knew, or reasonably should have known," I had no right to bring my action. I knew I had the right pursuant to the First and Fourteenth Amendments to the United States Constitution, which provides, in pertinent part: "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances, and pursuant to Article II Section 25 of the Constitution of the State of Colorado and I knew the conduct evidenced in the record caused extreme emotional distress to my then-wife Ann L. Ramsey and myself.

Consistently refusing to acknowledge the tort of intentional infliction of emotional distress and its elements, which I again presented to the court, the court ruled in favor of the defendants and now assessed $17,208 in attorney fees against me.

I filed a Rule 59 Motion for post trial relief. It was deemed denied for the reason it was not ruled upon in the allotted time. I appealed. The appellate court found my rule 59 motion not timely filed and issued a show cause order why my appeal should not be dismissed on that ground. That action was taken Sua Sponte, and in violation of state supreme court case law [A court of review will assume that an extension was properly made, in the absence of proper objections to the order of the court.

Niles v. Shinkle, 119 Colo. 458, 204 P.2d 1077 (1949) and analogously in *Brewster v. Nandrea*, 705 P.2d 1 Colo.1985 Refusal to enlarge time was an abuse of discretion where the failure to timely file was due to the failure of the clerk of the court of appeals to mail copies of the court of appeals opinion to the third party defendants as required by C.A.R. 36".],. I responded by demonstrating pursuant to rule that my motion not only was timely, but notice was not timely served. [see affidavit at appendix E] [The essence of procedural due process is fundamental fairness. This embodies adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).] The appellate court simply dismissed the appeal.

I filed a petition for writ of certiorari with the State Supreme Court on the basis of the **denial of Due Process** pursuant to Article 25 of the Colorado State Constitution. The petition was denied.

After eight years of litigation, it is nowhere reflected in any of the rulings that the petitioner and his wife experienced the conduct of the respondents and suffered the emotional distress evidenced in the record.

People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968). 165 Colo. 253, 439 P.2d 741 (1968). "Law" in the expression "due process of law" does not mean that whatever process is provided by the general assembly shall be the measure of the protection provided by the due process clause. Such a construction would render the guaranty mere nonsense for it would then mean no state shall deprive a person of life, liberty, or property, unless the state shall choose to do so.

ARGUMENT / REASONS FOR GRANTING THE PETITION

When a citizen of this country seeks relief from a civil problem in the courts he has a right to be heard, implicit in the first and fourteenth amendments to the U.S. Constitution. This court has ruled that access to the courts must be meaningful in numerous cases, one of which is Walters v. Radiation Survivors, 473 U.S. 305 (1985) Walters v. National Association of Radiation Survivors. Public trust in the courts demands that citizens be heard. Being heard doesn't mean being allowed to speak; it means a ruling reflects that he has been heard, and if denied, reasonably denied. The elements of the tort must be addressed. Otherwise, there is no *meaningful access* to the courts. The court utterly ignores the portion of C.R.C.P. 59 which says it is not the date of entry of Judgment, but the day the Judgment is mailed, if it is mailed, as it was in this case, five days after entry of judgment, on January 12, 2005, that tolls the time for filing post trial motions for relief.

"Draconian" comes to mind when one considers a 5 minute delay in an eight year long litigation when the trial court granted a one day extension that made the filing timely; and the improper notice has never been addressed. There is nothing in the record refuting my contention that I was not properly notified for purposes of tolling time to file for post trial relief (nonetheless, my rule 59 motion for post trial relief was only 5 minutes late) and the trial judge alluded to the improper notification in granting the one day extension [see appendix F] that was reversed sua sponte by the appellate court. Substantial justice has not been done.

Denial of my petition for writ of certiorari by the State Supreme Court effectively eliminated any review on the merits of my case.

The public view is that no matter how much a pro se litigant respects the system or how responsibly he or she performs their duty to the best of their ability (pro se litigants, after all, are not trained lawyers), they will not be heard. As a nation, we cannot, we must not, teach our children values only to treat them like fools when they try to live by them as adults. Public trust in the legal system is seriously eroded and must be restored if the deaths of our citizens to instill a democracy halfway around the world is not to be reduced to a mockery by the erosion of the democracy in this country. *Meaningful* access to the courts must be preserved, even to the level of a single, average individual citizen.

The court has found that I knew or reasonably should have known not to bring my lawsuit. The constitutional guarantee of Life, Liberty, and the Pursuit of happiness mentioned in the constitution has been obliterated. *Zavilla v. Masse*, 112 Colo. 183, 147 P.2d 823 (1944).

"Liberty", as used in this section and section 3 of this article, connotes far more than mere freedom from physical restraint; it is broad enough to protect one from governmental interference in the exercise of his intellect, in the formation of opinions, in the expression of them and in action or inaction dictated by his judgment, or choice in countless matters of purely personal concern.

Rule 10 delimits the matters for Supreme Court review. It is an important question of federal law whether an individual, acting responsibly, truly has a meaningful right to represent himself or herself in a court of law, and that matter should be *settled by this court* in favor of the constitution.

The lower court needs the supervision of this court to insure the constitution is to be upheld. Finally, this case is not a misapplication of a properly stated rule of law; it is an intentional refusal to apply at all a properly stated rule of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted:

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APPENDIX

A. DISTRICT COURT RULING

Garfield County, Colorado: District Court G98CV140 Div. C Plaintiffs: Robert W. Ramsey and Ann L. Ramsey v. Defendants: James Irvine and Sandra Irvine.

In pertinent part: (22) From August 17, 1999 through March 18, 2004, the Irvines incurred attorneys' fees of $18,190. Of this total, $430 was incurred after the entry of the Original Judgment but before the filing of the appeal; $15,560 was incurred as the result of the Ramseys' appeal and their consequent motion for new trial; and $2,200 was incurred after the Court granted the Motion for New Trial through the day prior to the new trial. Additional fees were incurred for the new trial itself.

(23) Whether or not the Irvines are entitled to an award of their fees on appeal depends upon whether or not the appeal lacked substantial justification. The jurisdiction to make this decision or to refer the issue back to the trial court for decision belongs to the court to which the appeal was made, namely the Court of Appeals. Sullivan v. Lutz, 827 P.2d. 626, 628-29 (Colo. App. 1992). The Court of Appeals took neither step. This Court is without authority to award the Irvines their costs and fees on appeal.

(24) In the Original Judgment, the Court concluded the measure of damages for abuse of process is the fees incurred to defend the wrongful litigation, not the fees incurred to prosecute the abuse of process claim. Technical Computer Services v. Buckley, 844 P.2d. 1249, 1256 (Colo.App. 1992). The same rationale applies to the prosecution of a claim for fees under section 13-17-102, C.R.S.

After the granting of the Motion for New Trial, fees incurred by the Irvines were fees incurred to prosecute their affirmative claims for attorneys' fees. An award for fees and costs incurred to complete the new trial is not warranted.

(25. The Court has considered the factors set forth in section 13-17-103 to the extent that evidence was presented on the factors. The discussion above applies to those factors. Therefore, on the 13-17-102 claim and on the abuse of process claim, judgment is entered in favor of the Irvines and against the Ramseys, jointly and severally, for attorneys' fees in the sum of $17, 208 ($14,348 in fees through August 3, 1999, plus $2, 430 in additional fees through August 16, 1999, plus $430 in additional fees prior to the filing of the appeal) and costs in the sum of $90.

Done on January 7, 2005. By the Court "s/J.B.Boyd".

B. ORDER DENYING APPEAL

Colorado Court of Appeals No. 05CA1277

ORDER . Robert W. Ramsey, Plaintiff-Appellant, v. James Irvine and Sandra Irvine, Defendants-Appellees.

Upon consideration of the response to the Order to show cause and the affidavit from the clerk of the district court, the Court Dimisses the appeal. The trial court may grant extensions for filing post-trial motions as long as the request made within the 15-day period. C.R.C.P 59(a); c.r.c.p. 6(b)(1). The trial court may not extend the time for filing post-trial motions when the extension request is not timely made. C.R.C.P. 6(b)(2); Schuster v. Zwicker, 659P.2d 687 (Colo.1983).

Here, appellant did file a motion for extension to file C.R.C.P. 59 relief until February 1, 2005. The time to file a motion for extension expired on January 24, 2005. Therefore, the Court determines that the notice of appeal was not timely filed and was filed beyond the jurisdictional time limits of the Court. By the Court: Vogt, J., Carparelli, J., Loeb, J. Dated Sept. 19, 2005.

C. ODER DENYING PETITION FOR REHEARING

Colorado Court of Appeals No. 05CA1277 ORDER . Robert W. Ramsey, Plaintiff-Appellant, v. James Irvine and Sandra Irvine, Defendants-Appellees.

Upon consideration of the petition for rehearing, the Court DENIES the petition. A judgment was entered by the district court on January 7, 2005. Therefore, any motion for extension to file post-trial relief was due 15 days plus 3 days for mailing later, which is January 25, 2005. The motion was not filed until February 1, 2005, which is a full seven days later.

By the Court: Vogt, J., Carparelli, J., Loeb, J. Dated Sept. 19, 2005.

D. ORDER DENYING PETITION FOR CERTIORARI

SUPREME COURT, STATE OF COLORADO CASE NO. 06SC52 CERTIORARI TO THE COURT OF APPEALS, 05CA1277 DISTRICT COURT, GARFIELD COUNTY, 98CV140 Petitioner: Robert W. Ramsey, v. Respondent: James Irvine and Sandra Irvine. ORDER OF COURT Upon consideration of the

Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals, IT IS THIS DAY ORDERED that said Petition for Writ opf Certiorari shall be, and the same hereby is, **DENIED. BY THE COURT, EN BANC, APRIL 10, 2006.**

E. AFFIDAVIT OF PETITIONER

BE IT ACKNOWLEDGED, that Robert W. Ramsey of Grand Lake, Colorado, the undersigned deponent, being of legal age, does hereby depose and say under oath as follows:
COURT OF APPEALS, STATE OF COLORADO
2 East 14th Street, Suite 300
Denver Colorado, 80203
CASE # 05CA1277

AFFIDAVIT # 3-10-05

Robert W. Ramsey
Plaintiff
v.
James Irvine
Sandra Irvine
Defendants

1) Prior to the hearing from which the appealed ruling issued, at the request of the Judge of the District Court, I supplied the Clerk of the District Court with my current

correct mailing address in Grand Lake, Colorado.
2) In January of 2005 the appealed ruling was entered and was not mailed to me at the correct address referred to in section (1) above, herein, but was mailed instead to my old address in New Castle, Colorado. I rarely frequent New Castle and did not receive *that copy* of the ruling until sometime in March or April.
3) In a motion filed with the District Court on February 1st, 2005, I explained to the District Court Judge that the ruling had not been mailed to me at my correct address and having been made aware by my ex-wife/co-litigant of the ruling having been mailed to her I suspected my notice went to my old address.
4) Within approximately one week after February 7th, 2005, I received notice of the ruling at issue from the District Court by U.S. Mail in my Grand Lake, Colorado, Post Office Box.
5) My rule 59 Motion was premised on the copy of the ruling mailed to me by my ex-wife/co-litigant on or around January 21st,2005.
And I affirm that the foregoing is true except as to statements made upon information and belief, and as to those I believe them to be true.
Witness my hand under the penalties of perjury this 3rd day of October, 2005.

"s/Robert W. Ramsey
Robert W. Ramsey P.O. Box 1904
Grand Lake, Colorado 80447

STATE OF COLORADO
COUNTY OF GRAND
On October 3rd,2005, before me, Robert W. Ramsey
personally appeared, personally known to me (or proved to

me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.
WITNESS my hand and official seal.

_"s/notary public"_____
Signature

(Seal)

F. ORDER ON REQUESTS FOR ADDITIONAL TIME

Garfield County, Colorado: District Court G98CV140 Div. C Plaintiffs: Robert W. Ramsey and Ann L. Ramsey v. Defendants: James Irvine and Sandra Irvine.
Pertinent part:

1) The Court entered its Judgment on January 7, 2005. The Court served its order mail on January 12, 2005. The deadline to file a Rule 59 motion was January 31, 2005. Plaintiffs ask for a one-day extension to February 1, 2005, citing computer problems and delayed delivery because of the address used by the Court. The one-day extension is granted. **Done of February 7, 2005. "s/J.B. Boyd".**